



INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-791/826 (Consolidated)

Certain Electric Fireplaces, Components Thereof, Manuals for Same, Certain Process for Manufacturing or Relating to Same and Certain Products Containing Same Issuance of a Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to modify-in-part and reverse-in-part a final initial determination (“ID”) (Order No. 20) of the presiding administrative law judge (“ALJ”) finding the remaining respondents, Shenzhen Reliap Industrial Co. (“Reliap”) and Yue Qiu Sheng (“Yue”), both of Shenzhen, China, in default and in violation of section 337. The Commission has also determined to affirm Order No. 19 denying Yue’s motion for summary determination. The Commission has issued a limited exclusion order directed against covered products of Reliap and Yue.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS)

at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Investigation No. 337-TA-791 ("the 791 investigation") on July 20, 2011, based on a complaint filed by Twin-Star International, Inc. of Delray Beach, Florida and TS Investment Holding Corp. of Miami, Florida (collectively, "Twin-Star"). 76 *Fed. Reg.* 43345-46 (July 20, 2011). The Commission instituted Investigation No. 337-TA-826 on January 19, 2012, based on another complaint filed by Twin-Star, and consolidated it with the 791 investigation. 77 *Fed. Reg.* 2757-58 (Jan. 19, 2012). The complaints allege a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electric fireplaces, components thereof, manuals for same, certain processes for manufacturing or relating to same and certain products containing same by reason of infringement of U.S. Copyright Nos. TX0007350474; TX0007350476; VA0001772660; and VA0001772661; and by reason of misappropriation of trade secrets, breach of contract, and tortious interference with contract, the threat or effect of which is to destroy or substantially injure an industry in the United States.

The Commission's notice of investigation named Reliap, Yue, and Whalen Furniture Manufacturing, Inc. ("Whalen") of San Diego, California as respondents. On July 3, 2012, the Commission issued notice of its determination not to review the ALJ's ID terminating the investigation as to Whalen based on a consent order and settlement agreement.

On June 20, 2012, Twin-Star moved for an ID finding the remaining respondents, Reliap and Yue, in default and in violation of section 337 pursuant to Commission Rule 210.17, 19 C.F.R. § 210.17. The Commission investigative attorney filed a response in support of the

motion.

On July 13, 2012, the ALJ granted Twin-Star's motion and issued the final ID in this investigation finding the remaining respondents in default and in violation of section 337 pursuant to 19 C.F.R. § 210.17 for failure to participate in the investigation following withdrawal of their counsel on March 12, 2012. The ID also contained the ALJ's recommended determination on remedy. Specifically, the ALJ recommended issuance of a limited exclusion order with respect to the covered products of the defaulting respondents.

Also on July 13, 2012, the ALJ issued Order No. 19, denying a motion filed by Yue on December 11, 2011, for summary determination that Twin-Star's breach of contract claim is outside the scope of the investigation. On July 20, 2012, the Commission investigative attorney ("IA") petitioned for review of Order No. 19 and the ALJ's final ID. Twin-Star filed a response in opposition on July 30, 2012.

On September 14, 2012, the Commission determined to review Order No. 19 and to review-in-part the final ID to the extent that it finds a violation of section 337 based on the breach of contract allegation. The determinations made in the final ID that were not reviewed became final determinations of the Commission by operation of rule. *See* 19 U.S.C. § 210.42(h).

The Commission requested briefing from the parties and interested non-parties regarding a question concerning the issue under review and on the issues of remedy, the public interest, and bonding. *77 Fed. Reg.* 58407-09 (Sept. 20, 2012).

On October 12, 2012, Twin-Star and the IA each filed a brief on the issues for which the Commission requested written submissions. The International Trade Commission Trial Lawyers Association filed a brief concerning the issue under review on the same date. The IA filed a reply brief on November 9, 2012.

Having reviewed the record in this investigation, including the final ID, Order No. 19, and the parties' written submissions, the Commission has determined to modify-in-part and reverse-in-part the final ID as follows: (1) vacating as moot the final ID to the extent that it finds a violation of section 337 based on the breach of contract and tortious interference with contract allegations with respect to the non-competition and non-solicitation provisions of the asserted contract; and (2) reversing the final ID to the extent it finds a violation based on the non-disclosure provision of the asserted contract. The Commission also affirms Order No. 19.

The Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry for consumption of electric fireplaces, components thereof, manuals for same, and products containing same that are manufactured abroad by or for, or imported by or for, Yue or Reliap, or any of their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns: (1) using misappropriated trade secrets asserted in this investigation; and/or (2) that infringe one or more of U.S. Copyright Nos. TX0007350474, TX0007350476, VA0001772660, or VA0001772661.

The Commission determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. § 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that a bond in the amount of 145 percent of the entered value of the covered products that are entered for consumption is required to permit temporary importation during the period of Presidential review (19 U.S.C. § 1337(j)). The Commission's order and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The Commission has terminated this investigation. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.17, 210.42, 210.45, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.17, 210.42, 210.45, 210.50).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

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